

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2009SF0993
)	EEOC NO.: 21BA90059
GABRIEL D. SMITH, JR.)	ALS NO.: 09-0553
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners Sakhawat Hussain, M.D., Spencer Leak, Sr. and Rozanne Ronen, presiding, upon Gabriel D. Smith, Jr.'s ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2009SF0993, and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of **COUNT A** of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. The Petitioner filed a charge of discrimination with the Respondent on October 6, 2008, amended April 8, 2009, alleging that Drew Corporation d/b/a Moultrie County Community Center ("Employer"), issued him a written reprimand (Count A), subjected him to different terms and conditions of employment (Count B), and discharged him (Count C), because of his race, Black, in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On August 31, 2009, the Respondent dismissed Count A of the Petitioner's charge for Lack of Substantial Evidence and made a finding of Substantial Evidence as to Counts B and C of the charge. On October 2, 2009, the Petitioner filed a timely Request asking the Commission to review the Respondent's dismissal of Count A of the charge.
2. The Employer is an intermediate care facility which provides medical services for the developmentally disabled. The Petitioner was hired by the Employer in February of 2008 as a Direct Service Personnel. One of the Petitioner's duties was to check and monitor the blood pressure of the Employer's patients.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

3. The Employer has in place Rules of Conduct ("Rules"). According to the Rules, all personnel, including the Petitioner, were required to follow all medical orders. One medical order was that generally, when a patient's blood pressure was greater than 200/100 or less than 90/50, all personnel were required to notify a registered nurse. In addition, the Employer maintained a Log Book wherein medical notes and directives regarding specific patients were contained. All personnel were required to check and sign the Log Book daily, and to follow the registered nurse's directives for the specified patient.
4. On October 1, 2008, the Employer, via the Petitioner's supervisor (race: Black), issued the Petitioner a written reprimand for failing to follow medical orders on September 29th and September 30, 2008, in that the Petitioner failed to check medical notes regarding specified patients, failed to follow the registered nurse's directives concerning those patients, and as a result failed to notify the registered nurse that the patients' blood pressure was high. The written reprimands were dated September 29th and September 30th, and both were signed solely by the Petitioner's supervisor.
5. In the course of its investigation, the Respondent determined the Petitioner's supervisor had also issued a written reprimand to a non-Black employee on September 30, 2008, also for failing to follow medical orders and for failing to notify a registered nurse that a patient's blood pressure was high.
6. In his Request, the Petitioner argues that he did follow the correct procedure for reporting a patient's blood pressure, insisting that he acted in accordance with the training provided to him by the Employer. The Petitioner contends that at least one other supervisor (not the Petitioner's supervisor's) as well as the Employer's Chief Executive Officer ("CEO") harbored racial animus against Black employees; the Petitioner states his co-workers overheard these individuals making derogatory statements about Black people. The Petitioner argues that because his supervisor stated the CEO actually made many of the decisions about whether to reprimand and terminate employees, the Petitioner had made out a *prima facie* case that the decision to reprimand and terminate him was made in whole or in part by the CEO.
7. In its Response, the Respondent requests that the Commission sustain the dismissal of Count A of the Petitioner's charge for Lack of Substantial evidence because it found no substantial evidence the Petitioner had been issued the written reprimands because of his race. Further, the Respondent noted that it had already found Substantial Evidence as to Count B and Count C of the Petitioner's charge, wherein he alleged, respectively, the Employer had subjected him to different terms and conditions of employment and the Employer had discharged him because of his race; therefore, Counts B & C of the charge were not before the Commission on this Request.

Conclusion

The Commission concludes that the Respondent properly dismissed Count A of the Petitioner's charge for lack of substantial evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D). Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, * 2 (March 7, 1995)(1995 WL 793258).

The Commission finds there is no substantial evidence to support a *prima facie* case of race discrimination as to the issuance of the written reprimands because the decision-maker in this case, who was the Petitioner's supervisor, issued a written reprimand to a non-Black employee for committing the same alleged misconduct as the Petitioner. Hence, there is no substantial evidence the Employer treated an employee outside of the Petitioner's protected class more favorably than the Petitioner under similar circumstances. Even assuming *arguendo* there was some competent evidence the Employer's CEO had some influence over the Petitioner's supervisor's decision to issue written reprimands to employees, in this case, this alleged influence resulted in both the Petitioner and the non-Black employee being treated the same, in that both were issued written reprimands for the same misconduct.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of Count A of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Count A of the Petitioner's charge is hereby **SUSTAINED**.

This matter remains pending as to Count B and Count C of the charge. Therefore, this Order is not yet Final and Appealable.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Page 4 of 4

In the Matter of the Request for Review by: Gabriel D. Smith, Jr.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

)

)

)

Entered this 28th day of April 2010.

Commissioner Sakhawat Hussain, M.D.

Commissioner Spencer Leak, Sr.

Commissioner Rozanne Ronen